

REMARKS

All of the original claims remain unchanged and a new claim 12 added. Reconsideration and allowance of all claims is requested for the reasons indicated below.

At the outset, the Examiner's indication of allowable subject matter relative to claims 9 and 10 have been noted with appreciation. However, since the claims from which they depend are considered equally allowable, no action is being taken at this time to place these claims in independent form.

Claims 1 & 2 have been rejected under 35 U.S.C. § 102 as being anticipated by the disclosure of the patent to Carr (U.S. Patent 2,181,869), while claims 3-8 have been rejected under § 103 as being obvious over the Carr citation. However, it appears that neither of these rejections is supported by the disclosure of the Carr patent.

Firstly, with regard to claim 1, it is noted that Carr shows in Figs. 20 — 23 cited by the Examiner that a movable lid member 97 (see page 6, lines 44-47 of Carr) is provided in front of a door 90 of a rear deck. The movable lid member 97 is secured to the top of rear roof part 113 of the top T⁵ (see, Fig. 21 and 22, lid member 97 fixed to arm 100). Furthermore, as described in the right hand column of page 6, at lines 55-57, the lid member 97 is fixed to the top and "moves downwardly to the position shown in dotted lines in Fig. 20" when the rear roof part rotates in the stowage space. Therefore, the lid member 97 is not and cannot be adjusted to a position in which it is positioned against an inside of the rear roof part due to the manner in which it is fixedly connected with the rear roof part and Fig. 20 clearly shows the lowered position of lid 97 as being spaced from the top T⁵. Furthermore, because of the manner in which, when the lid member 97 swings downwardly with the rear roof part, the lid member 98 swings upwardly (see page 6, lines 57 — 60) so that it may be juxtaposed to and substantially aligned with the door 90, taking the position previously held by the now-lowered lid member 97, positioning of the lid member to be located against the rear roof part which has been folded down under the door 90 (as recited in claim 1) is simply not feasible and it certainly could not be located as set forth in new claim 12 generally parallel to and against the inside of the lowered rear roof.

As for claims 3, 4, 6 and 8, the Examiner has failed to cite any references that disclose the pivotal connection recited in claim 3, the swiveling movement as recited in claim 4, the pretensioned shelf in claim 6, or the attachment as recited in claim 8. The Examiner's naked assertion that "it would have been obvious to one of ordinary skill" to combine these

elements with the subject matter of claim 1 is improper and not sustainable. If the Examiner should maintain the rejection of these claims, she is requested to show such features could be implemented in the Carr arrangement that is designed to have the lids 97 and 98 exchange places with each other via a mechanism that links them to the roof part. Furthermore, in the context of the nature of Carr's mechanism, it is not understandable what would motivate such a change which would require wholesale modification of his device for no apparent reason and for no apparent benefit. The Examiner's supposition that such features would provide a more compact arrangement, or a more stable raised position are just that, suppositions and they have no basis in fact, apparently having been contrived simply to meet the Examiner's obligation to provide a reason or motivation for the changes to the prior art proposed by her since no basis for them could be found in the Carr patent or any other reference.

Therefore, it is submitted that Carr neither anticipates claim 1 nor gives any hint to a convertible roof with the features of claim 1 where the shelf is movable relative to the rear roof part and is moved into a position against an inner side of the rear roof part when the roof is in the stowage space. Accordingly, the rejections based upon the Carr patent should be withdrawn and such action is requested.

As for the rejection of claim 11 based upon the combination of the Carr and Dinter et al. patents, besides the fact that the Dinter et al. patent cannot overcome the deficiencies of the Carr disclosure noted above, it is pointed out that the roof construction of the Dinter et al. patent is so different from that of the Carr patent, that no reasonable transference of the features of one to the other is possible. For example, in Carr, a pair of lids exchange positions while in Dinter et al. patent, there is not even one equivalent rear shelf that is moved into the storage compartment, let alone two that change places. These two patents merely represent two very different approaches to providing a convertible roof for a motor vehicle. Furthermore, since claim 11 requires the rear shelf to be between the two roof parts of matching camber, and no movable shelf exists in arrangement of the Dinter et al. patent, how can this patent teach how to position roof parts in a roof that has such a movable shelf. Moreover, given the dual lid arrangement of Carr, it is not even understood why, even if his roof parts were to be stacked in the manner of the Dinter et al. patent roof, his shelf 97 would be modified to move into a position between the roof parts, let alone how such could be accomplished.

Thus, the combination of the Carr and Dinter et al. patents is more supportive of a finding that the present invention is patentable than it is that it is obvious. As such, withdrawal of the rejection based upon these two references is requested.

The prior art that has been cited, but not applied by the Examiner has been taken into consideration during formulation of this response. However, since this art was not considered by the Examiner to be of sufficient relevance to apply against any of the claims, no detailed comments thereon are believed to be warranted at this time.

While the present application is now believed to be in condition for allowance, should the Examiner find some issue to remain unresolved, or should any new issues arise, which could be eliminated through discussions with applicant's representative, then the Examiner is invited to contact the undersigned by telephone in order that the further prosecution of this application can thereby be expedited.

Respectfully submitted,

By: 

David S. Safran
Registration No. 27,997

NIXON PEABODY LLP
Suite 900
401 9th Street, N.W.
Washington, DC 20004-2128

Telephone: (703) 827-8094

NVA305667.1